

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF ALABAMA
NORTHERN DIVISION

UNITED STATES OF AMERICA, *

*

Plaintiff, *

*

v. *

CASE NO. 2:06-CV-00116-MEF

*

FIVE HUNDRED FORTY-THREE
THOUSAND ONE HUNDRED NINETY
DOLLARS (\$543,190.00 in United States
Currency

*

*

*

*

Defendant.

*

and *

*

*

*

ENRIQUE ALCARAZ-BARAJAS,

*

*

*

Claimant. *

*

**MOTION TO STRIKE FROM CONSIDERATION
ON MOTION FOR SUMMARY JUDGMENT**

Comes now the Claimant Enrique Alcaraz-Barajas, by and through counsel and moves the Court to strike certain portions of the documents and other record materials relied upon by the Plaintiff in its Motion for Summary Judgment as follows:

1. All references to statements and events prior to, during and immediately after the stop and search of Claimant's luggage, as well as all statements and events up to the post-arrest interview of Claimant are rank hearsay. The Verified Complaint for Forfeiture in Rem is verified by Agent Joe Herman, who was not present during the stop, search, on-site interrogation, seizure and transport. Such hearsay includes, but is not limited to, the allegations of Paragraph number 5, subparagraphs a, b, and c. It should be noted that the verification says, "that the matters contained in the Verified Complaint are true to my knowledge, *except that those matters herein stated to be alleged on information and belief and on those matters I believe them to be true.*" (emphasis

supplied). It should be further noted that there is, in the Verified Complaint, no distinction between matters in his personal knowledge and those that are not. Additionally, the alleged statements by Esther Sandoval and Mario Martinez are, as to Claimant, rank hearsay in and of themselves without regard to whether Agent Herman actually heard them. Herman is, thus, not competent to testify to such matters and the verification fails to claim that he is in a manner adequate for reliance in summary judgment. **Rule 56 (e), F.R.C.P.**

2. The "claim" attached to the Motion for Summary Judgment. It is not the claim filed in this cause by Claimant with the DEA. Attached hereto is a copy of the claim and the response from the DEA to undersigned counsel accepting that claim. Undersigned counsel has no knowledge of the claim attached to the Motion for Summary Judgement and does not recognize the alleged notarization. Said claim was not prepared by undersigned counsel.

3. All statements of any kind and nature by Claimant because they were the product of an illegal stop, detention, arrest, seizure, questioning and search of Claimant and his personal property, subject to suppression and disallowance pursuant to Claimant's rights under the Fourth Amendment to the Constitution of the United States of America. Filed concurrently herewith is Claimant's Motion to Suppress, which is incorporated herein by reference. The Fourth Amendment Exclusionary Rule applies to civil forfeiture. See **U.S. v. Premises and Real Property with Bldgs., Appurtenances and Improvements at 500 Delaware Street, 113 F.3d 310, 312 n.3 (2nd Cir. 1997).**

4. The alleged alert by a drug dog as to both the trunk of the vehicle and the luggage of Claimant, upon the same grounds as alleged in paragraph 3 above.

WHEREFORE, the defendant moves this Court to strike said matters and remove them from consideration on Motion for Summary Judgment.

Respectfully submitted this 14th day of May, 2007.

s/Bruce Maddox
Bruce Maddox (MAD013)

Attorney for Enrique Alcaraz-Barajas
6728 Taylor Court
Montgomery, Alabama 36117
Phone: (334) 244-7333
Fax: (334) 260-9600
retrocamb@aol.com

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of May, 2007, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to appropriate parties.

s/Bruce Maddox
Of Counsel

Before the Drug Enforcement Administration

In the Matter of:

**\$543,190 U.S. Currency
Asset ID# 05-DEA-456576
Case #: KI-05-0058**

CLAIM

Before me the undersigned authority came Enriqu Alcaraz-Barajas, who under oath gives the following statement.

1. My name is Enriqu Alcaraz-Barajas. I make this claim pursuant to Rule C (6) of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure, for any interest in **\$543,190 U.S. Currency**, Identification Number **05-DEA-456576**, made subject of this action for the forfeiture pursuant to Title 18, United States Code (U.S.C.) Section 983 (a)(2), and/or Title 21, United States code (U.S.C.) Section 881 (a)(6) and/or Title 28, United States Code (U.S.C.) Sections 1345 and 1355.
2. On the date of seizure a total of **\$543,190 U.S. Currency** was taken, which I hereby claim.
3. I am entitled to the lawful possession of said property, because I lawfully possessed said property at the time of seizure and I lawfully own an interest in same.

DATED this the 22nd day of December, 2005.

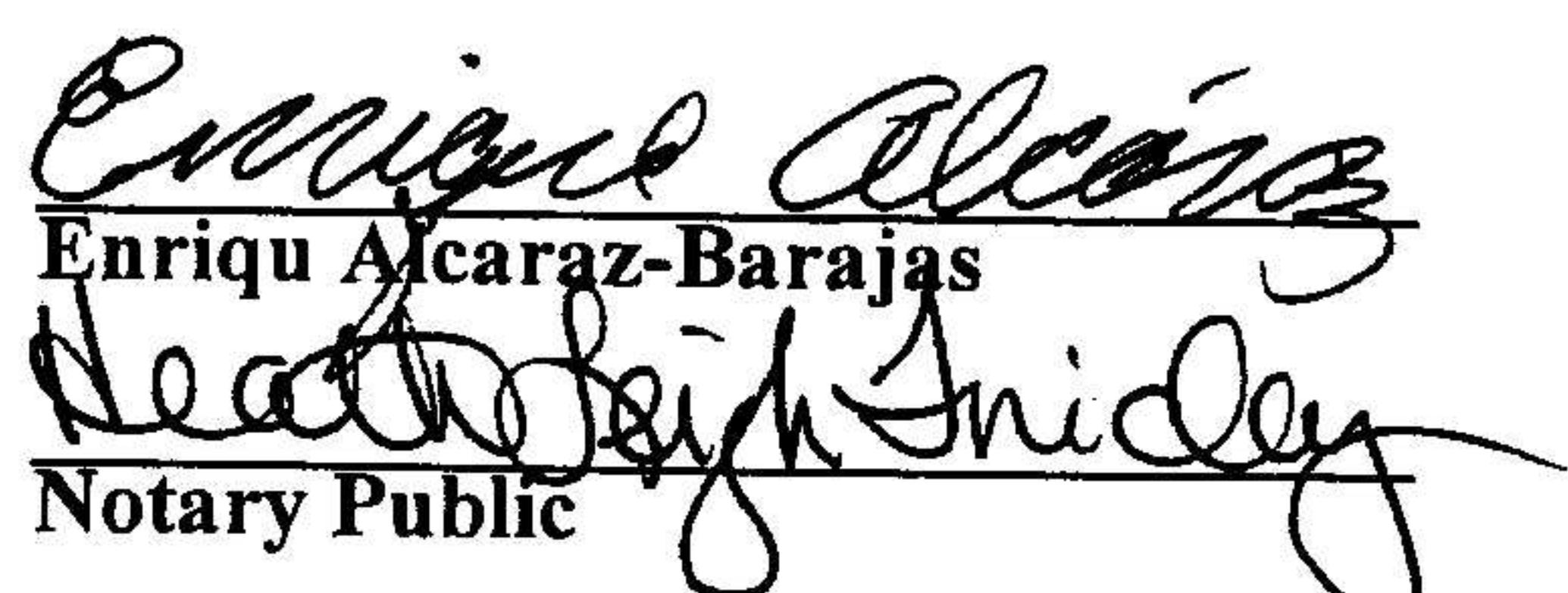

Enriqu Alcaraz-Barajas

STATE OF ALABAMA)

MONTGOMERY COUNTY)

Before me the undersigned authority, a Notary Public for the State at Large, personally appeared **Enriqu Alcaraz-Barajas**, who is known to me and who by me first duly sworn, deposes and says that the above statements are true and correct to the best of his knowledge and belief, and that he makes the above statements subject to the penalty of perjury.

SWORN to and SUBSCRIBED before me this the 22nd day of December, 2005.


Leah Leigh Shirley
Notary Public

My commission expires on 01-30-07.



U. S. Department of Justice
Drug Enforcement Administration
Office of Operations Management

www.dea.gov

JAN 18 2006

Enrique Alcaraz-Barajas
c/o Bruce Maddox, Esq.
6728 Taylor Court
Montgomery, AL 36117

ASSET ID NUMBER	CASE NUMBER	PROPERTY DESCRIPTION
05-DEA-456576	KI-05-0058	\$543,190.00 U.S. Currency
JUDICIAL DISTRICT:		Middle District of Alabama

Dear Mr. Alcaraz-Barajas:

The Drug Enforcement Administration (DEA) has received your claim and/or petition regarding the above-referenced asset. The following information is provided:

XX Your claim has been accepted and this matter has been referred to the United States Attorney for the Civil Division in the judicial district noted above. Please direct all inquiries regarding this matter to that office.

— Your claim and petition have been accepted and this matter has been referred to the United States Attorney for the Civil Division in the judicial district noted above. Please direct all inquiries regarding this matter to that office.

— Your petition, which was previously acknowledged, is now being handled by the United States Attorney for the Civil Division in the judicial district noted above. Please direct all inquiries regarding this matter to that office.

— Your claim for the above referenced property is being **returned** because it was received **in this office** after the last date to file, which was _____.

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— Petitions for Remission and/or Mitigation of forfeiture may be filed until the date the property is disposed of according to law. Since you submitted a petition along with your claim, this office will administratively rule on your petition. It is anticipated that this process will take a minimum of **120 days** before a decision can be rendered on the merits of the petition. Please be assured that all petitions are handled on a “**first-in, first-out**” basis.

— Although you did **not** file a Petition for Remission and/or Mitigation along with your claim, as a matter of discretion, we will allow you **twenty (20) days** from the date of receipt of this letter to file a petition for an administrative ruling by this office before the property is disposed of according to law. Please note that your petition must be sworn to under penalty of perjury. For your ready reference, the acceptable language required by statute is as follows:

“I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date) (Signature)”.

Please ensure that **all documents and correspondence regarding this matter reference the DEA asset identifier and case numbers noted above** and, unless otherwise directed, be addressed to the Forfeiture Counsel, Asset Forfeiture Section, Drug Enforcement Administration, HQ’s Forfeiture Response, P.O. Box 1475, Quantico, Virginia 22134-1475. Correspondence sent via private delivery must be sent to the Asset Forfeiture Section, OMA, Office of Operations Management, Drug Enforcement Administration, 2401 Jefferson Davis Highway, Alexandria, Virginia 22301.

Sincerely,



Asset Forfeiture Section
Office of Operations Management

CLAIM.ACKNOWLEDGE.LETTER (SEPT. 04)

BY: NAM AD CODE #: 846